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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 08, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Marathon County Department of Social Services in regard to Medical Assistance, a telephonic hearing was held on June 11, 2015, at Wausau, Wisconsin. At the request of petitioner, a hearing set for May 27, 2015 was rescheduled. At the request of the parties, the record was held open for the submission of closing arguments to the Division of Hearing and Appeals (DHA) by June 18, 2015. Both parties timely submitted their arguments to DHA which are received into the hearing record.

The issue for determination is whether the county agency correctly determined that petitioner was overpaid a total of \$4,025.11 in BadgerCare (BC) Plus benefits for herself during the period of September 1, 2013 to September 30, 2014, due to petitioner's failure to timely report her employer health insurance and under-reporting of her employment income to the agency which resulted in household income above the BC income eligibility limit during the entire overpayment period and incorrectly paid capitation fees for the petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Marathon County Department of Social Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Gary M. Wolkstein  
Division of Hearings and Appeals

[REDACTED]

## FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County who received BadgerCare (BC) Plus benefits for herself and her two children during the time period of September 1, 2013 to September 30, 2014.
2. The county agency sent a July 12, 2013 notice to the petitioner stating that she was required to report her gross household income by the 10<sup>th</sup> of the next month if her income exceeded \$1,627.50. Petitioner's income during July, 2013 was \$2,885.75.
3. The petitioner's household's income was above the income reporting requirement as of July, 2013 which required petitioner to report the increase in her income by the tenth of August, 2013 (which affected her September, 2013 BC eligibility, capitation fees, and BC premiums).
4. The petitioner failed to timely report to the agency that she was employed as a teacher for the [REDACTED] during August, 2013 for the school year.
5. The petitioner failed to establish with any reliable evidence that she dropped off at the agency a copy of her teacher contract during August, 2013 or during any time during the MA overpayment period.
6. The petitioner failed to timely notify the agency that she had private health insurance through the [REDACTED] as a teacher.
7. During her BadgerCare (BC) review applications during the period of September, 2013 through September, 2014, the respondent failed to timely report her employment income as a teacher for the [REDACTED] was above 130% of the federal poverty level, but instead petitioner continued to allege lower earned income.
8. Per January, 2014 SWICA State wage match regarding petitioner, the county agency received a wage discrepancy alert to investigate a possible MA overpayment for the petitioner's household based upon unreported household income.
9. The petitioner's earned income was above the BC 200% FPL income of eligibility limits of \$3,255 for a household of three during each month of the period from September 1, 2013 to September 30, 2014 resulting in petitioner owing capitation fees for each of those months. Those capitation fees were paid even if petitioner had private health insurance.
10. The Medicaid program paid some of petitioner's medical bills during most of the months during petitioner's BC overpayment period even though she also had private health insurance through Security Health Plan as a teacher.
11. The petitioner's earned income was higher than she reported resulting in unpaid premiums during the period of September, 2013 through September, 2014 for her two children.
12. The Department sent a March 31, 2015 BadgerCare Plus Overpayment Notice to the petitioner stating that she received an overpayment of BadgerCare Plus benefits for her household of three in the total amount of \$5,108.66 during the period of January 1, 2013 to September 30, 2014, due to failure to fully report her household income resulting in unpaid premiums for her two children (\$1,083.55) and capitation fees of \$4,025.11 paid when petitioner was income ineligible for BC benefits.
13. The BadgerCare (BC) program paid for the following monthly capitation fees and MA payments for medical services for petitioner: a) September, 2013 - \$196.13 capitation and \$40.18 MA paid; b) October, 2013 - \$234.90 capitation and \$71.42 MA paid; c) November, 2013 - \$23.90 capitation and \$58.15 MA paid; d) December, 2013 - \$234.90 capitation and \$68.73 MA paid; e)

January, 2014 - \$233.63 capitation and \$335.80 MA paid; f) February, 2014 - \$230.29 capitation and \$51.29 MA paid; g) March, 2014 - \$233.63 capitation and \$205.54 MA paid; h) April, 2014 - \$250.56 capitation and \$22.02 MA paid; i) May, 2014 - \$250.56 capitation and \$123.45 MA paid; j) June, 2014 - \$250.56 capitation and \$40.34 MA paid; k) July, 2014 - \$250.56 capitation and \$0 MA paid; l) August, 2014 - \$250.56 capitation and \$0 MA paid; m) September, 2014 - \$250.56 capitation and \$0 MA paid.

14. During the June 11, 2015 hearing, petitioner stipulated that she was no longer contesting the \$1,083.55 MA overpayment for her two children for unpaid BC premiums, and admitted she owed the repayment of that \$1,083.55 to the Department.

## **DISCUSSION**

The Department of Health Services (Department) is legally required to seek recovery of incorrect BadgerCare Plus (BCP) payments when a recipient engages in a misstatement or omission of fact on a BCP application, or fails to report income information, which in turn gives rise to a BCP overpayment:

**49.497 Recovery of incorrect medical assistance payments. (1)** (a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s.49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits *under this subchapter* or s.49.665.

2. **The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.**

3. **The *failure* of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf *to report any change in the recipient's financial or nonfinancial situation* or eligibility characteristics *that would have affected the recipient's eligibility for benefits* or the recipient's cost-sharing requirements.**

(b) The department's right of recovery is against any medical assistance recipient to whom or on whose behalf the incorrect payment was made. The extent of recovery is limited to the amount of the benefits incorrectly granted. ...

*(Emphasis added)*

Wis. Stat. §49.497(1). BCP is in the same subchapter as §49.497. See also, *BCP Eligibility Handbook (BCPEH)*, §28.1, online at <http://www.emhandbooks.wi.gov/bcplus/> :

### **28.1 OVERPAYMENTS.**

An “overpayment” occurs when BC+ benefits are paid for someone who was not eligible for them or when BC+ premium calculations are incorrect. The amount of recovery may not exceed the amount of the BC+ benefits incorrectly provided. Some examples of how overpayments occur are:

1. **Concealing or not reporting income.**
2. **Failure to report a change in income.**
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

(Emphasis added).

## **28.2 RECOVERABLE OVERPAYMENTS.**

Initiate recovery for a BC+ overpayment, if the incorrect payment resulted from one of the following:

### **1. Applicant /Member Error**

Applicant/Member error exists when an applicant, member or any other person responsible for giving information on the member's behalf unintentionally misstates (financial or non-financial) facts, which results in the member receiving a benefit that s/he is not entitled to or more benefits than s/he is entitled to. Failure to report non-financial facts that impact eligibility or cost share amounts is a recoverable overpayment.

...

### **2. Fraud. ...**

*BCPEH*, §28.1 – 28.2.

The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

For administrative hearings, the standard of proof is the preponderance of the evidence. Also, in a hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

In this case, during the hearing and while the record was held open, the county agency presented a well-organized and documented case to establish that it was correctly pursuing an MA overpayment against the petitioner. The county agency discovered through a State wage match (SWICA) that petitioner failed to timely report to the county agency her employment as a teacher for the [REDACTED] during August, 2013 or during that school year. The agency investigated the matter further, and confirmed that petitioner failed to report her monthly earned income, and that petitioner's household income was above the income eligibility limit for the entire overpayment period of September, 2013 through September, 2014. See Finding of Fact #5 above. The petitioner also owed capitation fees for those months in which her household income was above the income limits even if she had private insurance. See above Findings of Fact. The petitioner also owed unpaid premiums during the overpayment period for her two children. During the hearing, petitioner stipulated to that \$1,083.55 overpayment for her two children. See Finding of Fact #14 above. As a result, the county agency correctly determined in the contested overpayment issue that the petitioner was overpaid \$4,025.11 for her failure to fully and accurately report her employment and income as a teacher during the overpayment period.

During the June 11, 2015 hearing and while the record was held open, petitioner argued that she dropped off at the agency a copy of her teacher contract during August, 2013. However, petitioner was unable to provide any reliable evidence that she had submitted her teacher contract to the agency. The county agency representatives disputed that any such submission had been dropped off by the petitioner during August, 2013 or the months after August, 2013. In addition, petitioner repeatedly argued that she had no need for the BC coverage because she had private health insurance. However, such argument also was not convincing because not only did BC pay monthly capitation fees for the petitioner, but the BC program made actual monthly medical payments for services for the petitioner. See Finding of Fact #13 above.

[REDACTED]

While petitioner did establish she had private insurance during the overpayment period, petitioner was unable to refute the county's case, or undermine any of its substantial documentation that it was correctly seeking an MA overpayment against the petitioner during the period of September, 2013 through September, 2014. Further, the county representative explained that petitioner was notified of her responsibility to accurately and timely report all of her household's income information and any **changes** (including new employment) to household income, as she did sign a "Notice of Responsibility." Petitioner was also unable to establish any error in the county's calculation of her BC overpayment, or that she had made any payments towards that overpayment.

The BadgerCare Plus Handbook provides that BC members must report their income changes when their total monthly gross income exceeds the percentages of the Federal Poverty Limit (FPL for their group size) by the 10<sup>th</sup> of the month following the month in which total income exceeds the previous threshold. BadgerCare Plus Handbook, section 27.3, "Income Change Report."

Based upon the answers during the hearing and in the detailed itemization of her overpayment provided by the county (including detailed BC payments and capitation fees for petitioner), the petitioner was provided a full explanation of her BadgerCare overpayment. The petitioner was unable to establish with any specificity any error on the part of the county agency in concluding that her household income was above the income limit during the entire overpayment period or that she had improperly received MA payments on behalf of herself due to her household's income ineligibility or unpaid BC premiums for her children, or incorrectly paid capitation fees.

During the hearing, petitioner's testimony was simply not persuasive that she timely reported to the county agency her full, actual income as a teacher and her access to employer health insurance. Accordingly, based upon the above hearing record, I conclude that the county agency correctly determined that petitioner was overpaid a total of \$4,025.11 in BadgerCare (BC) Plus benefits for herself during the period of September 1, 2013 to September 30, 2014, due to petitioner's failure to timely report her employer health insurance and under-reporting of her income to the agency which resulted in household income above the BC income eligibility limit during the entire overpayment period and incorrectly paid capitation fees and MA services paid for the petitioner.

### **CONCLUSIONS OF LAW**

The county agency correctly determined that petitioner was overpaid a total of \$4,025.11 in BadgerCare (BC) Plus benefits for herself during the period of September 1, 2013 to September 30, 2014, due to petitioner's failure to timely report her employer health insurance and under-reporting of her income to the agency which resulted in household income above the BC income eligibility limit during the entire overpayment period and incorrectly paid capitation fees and MA services paid for the petitioner.

**THEREFORE, it is**

**ORDERED**

The petition for review herein be and the same is hereby Dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

[REDACTED]

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 28th day of July, 2015

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\sGary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 28, 2015.

Marathon County Department of Social Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability